IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MONTY RICHARDSON, Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	)	No. 62808-9-I DIVISION ONE UNPUBLISHED OPINION FILED: April 26, 2010

Grosse, J. — This court will not substitute its judgment for that of the Department of Social and Health Services regarding witness credibility and weight of evidence in child abuse proceedings. Here, the review judge's factual findings are supported by substantial evidence and the findings support the review judge's legal conclusions. We affirm the decision that Monty Richardson's care of his infant daughter while he was under the influence of crack cocaine and smoking crack cocaine constitutes negligent treatment or maltreatment of a child.

FACTS

Monty Richardson and Janet Blessing are the parents of K.M.R., born February 8, 2005. On August 29, 2005, Richardson's sister, Deana Terrone, cared for K.M.R. while Richardson and Blessing were out. Richardson returned and spent between 30 to 45 minutes alone with K.M.R. and then returned the baby to Terrone. Terrone told her daughter Shyla Winterholler that she was concerned that Richardson had been smoking cocaine while with K.M.R.

Winterholler called Child Protective Services (CPS).

A CPS investigator determined that the allegation of negligent treatment or maltreatment of K.M.R. by Richardson was founded. The Department of Social and Health Services (DSHS) reviewed the finding at Richardson's request and determined that it was correct and would not be changed. Richardson requested an administrative hearing. An administrative law judge held a hearing and issued an initial order affirming the founded finding of negligent treatment or maltreatment on January 5, 2007. Following Richardson's appeal to the DSHS Board of Appeals, a review judge issued a review decision and final order on March 19, 2007, affirming the initial order. The review judge denied reconsideration on April 20, 2007.

Richardson petitioned for judicial review in King County Superior Court. With his briefing, Richardson filed a letter from Terrone and a declaration by Winterholler, both dated December 2007. The trial court determined that the letter and declaration were not admissible as new evidence because Richardson was aware of the information at the time of the administrative hearing and refused to consider them. On December 5, 2008, the trial court denied Richardson's petition for review and affirmed the orders of the DSHS Board of Appeals.

Richardson appeals.

ANALYSIS

We review administrative action in the same manner as the superior

court, applying the standards of the Washington Administrative Procedure Act, chapter 34.05 RCW, directly to the record before the agency.[1] The statutory bases for reversing an agency order include: the agency (1) erroneously interpreted or applied the law, (2) engaged in unlawful procedure or decision-making process, or the order (3) is not supported by substantial evidence, (4) is inconsistent with a rule of the agency, or (5) is arbitrary or capricious.[2] We do not "substitute our judgment for that of the agency regarding witness credibility or the weight of evidence."[3] The party challenging the agency action bears the burden of proof.[4]

Richardson does not assign error to any finding of fact or conclusion of law in the Board of Appeals' review decision and final order and fails to cite relevant authority to support any of his arguments. Failure to provide argument and citation to authority in support of assignments of error, as required under RAP 10.3, generally precludes appellate consideration of an alleged error.[5] Even if we disregard these deficiencies, Richardson fails to demonstrate any basis for reversing the DSHS order.

The main thrust of Richardson's appeal is that CPS failed to conduct a complete and unbiased investigation and that the administrative review process

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[1] Ruland v. State, Dep't of Soc. & Health Servs., 144 Wn. App. 263, 272, 182 P.3d 270 (2008).
[2] RCW 34.05.570(3); Ruland, 144 Wn. App. at 272.
[3] Affordable Cabs, Inc. v. Dep't of Employment Sec., 124 Wn. App. 361, 367, 101 P.3d 440 (2004).
[4] RCW 34.05.570(1)(a); Ruland, 144 Wn. App. at 272.
[5] Hollis v. Garwall, Inc., 137 Wn.2d 683, 689 n.4, 974 P.2d 836 (1999); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

has compounded rather than resolved an inaccurate and later recanted CPS referral. According to Richardson, a full investigation of the facts will reveal that Terrone called CPS because she was paranoid as a result of her own struggles with addiction and hoped that some outside intervention would help save Richardson from his own addiction. Richardson seeks reversal of the finding of child neglect or remand for a new administrative hearing or a new CPS investigation.

As to the record on review, Richardson argues that the trial court should have considered Terrone's December 2007 letter and Winterholler's December 2007 declaration because Terrone and Winterholler were the central witnesses in the case. Richardson does not claim that he was not aware of the information in the documents at the time of the administrative hearing and he provides no relevant authority to support his argument that it "seems . . . reasonable" to allow the witnesses to respond to the CPS investigation and administrative process. Under these circumstances, Richardson fails to establish that the documents should be part of the record on review.[6]

Richardson also complains that the record is not complete because Blessing did not testify at the administrative hearing. He suggests that the administrative law judge misled him into believing that Blessing's testimony had

[6] See RCW 34.05.558 and RCW 34.05.562(1) (limiting review to agency record unless additional evidence is needed to decide issues regarding the possibility of disqualifying agency actors or certain matters of procedure); Okamoto v. State Employment Sec. Dep't, 107 Wn. App. 490, 494-95, 27 P.3d 1203 (2001) (trial court did not abuse discretion by denying motion to supplement the record with evidence that did not relate to grounds for admission in RCW 34.05.562(1)).

been excluded because she was not an "eyewitness" to the events at issue or somehow prevented him from calling Blessing to testify.[7] The record does not support his claim. At the beginning of the administrative hearing, the judge observed that Blessing was listed as a witness and asked whether DSHS had any objection to her being in the room. The DSHS attorney asked that Blessing "wait outside until after she has testified." The judge agreed and asked Blessing to wait outside. The judge then reviewed Richardson's witness list, which included Blessing, on the record. After DSHS rested, the judge asked Richardson repeatedly whether he had any additional witnesses to present. Richardson twice stated that he had no more witnesses. Nothing in the record indicates that the administrative law judge excluded Blessing's testimony or prevented Richardson from calling Blessing as a witness. To the extent that Richardson's request for remand for a new hearing or a new investigation is based on his theory that Blessing was improperly prevented from testifying, he fails to demonstrate grounds for relief.

Richardson also argues that the factual findings are not supported by substantial evidence because (1) he had used only a small amount of cocaine earlier in the day and was not impaired while with K.M.R.; (2) K.M.R. was not at risk because Terrone was close by; (3) Terrone made untrue or exaggerated statements to the CPS investigator so that Richardson would get help with his drug addiction; and (4) the CPS investigator was biased and failed to conduct a

[7] Richardson claims that Blessing's testimony about his struggles with addiction and the history of family dynamics will demonstrate that Terrone's initial statements to CPS were inaccurate and exaggerated.

thorough investigation or consider the family dynamics underlying the exaggerated initial report.

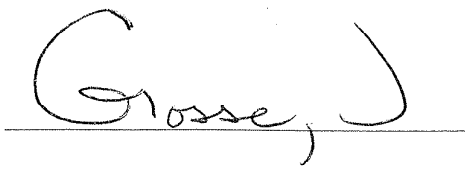
But DSHS presented testimony at the hearing indicating that (1) Richardson admitted to the CPS investigator that he came home high on August 29; (2) Terrone told the CPS investigator that Richardson smoked crack at the house with K.M.R. in the same room and that K.M.R. was "glassy eyed and crying;" (3) Richardson admitted at the hearing that he smoked crack on August 29 before taking K.M.R. and that the drug affected his judgment; (4) Richardson admitted that he had K.M.R. with him for about 10 minutes while he was under the influence of crack; and (5) Terrone testified that when Richardson returned K.M.R., who was crying excessively, to her, she suspected that Richardson had smoked crack and confronted him. Terrone also testified that she believed that Richardson did not smoke crack until after he returned K.M.R. to her, but she had exaggerated her report to CPS because she was paranoid at the time and afraid for Richardson's life.

The reviewing judge adopted the credibility determinations of the administrative law judge and found that (1) the CPS investigator's testimony was credible; (2) Richardson provided some false and some unpersuasive testimony, in addition to certain admissions; and (3) Terrone attempted to minimize her earlier statements "but clearly she believed that he used and was using crack cocaine to such an extent that K.M.R.'s welfare was at risk; on the date of the alleged incident, she had specific concerns about his usage of cocaine in front of

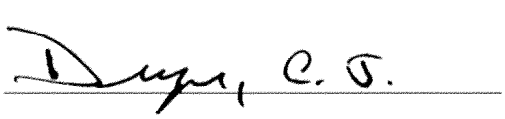
K.M.R." Based on this record, Richardson fails to demonstrate that the findings are not supported by substantial evidence.

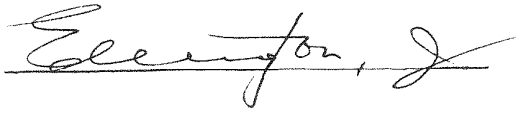
Although the majority of Richardson's arguments are essentially challenging the sufficiency of the facts, he also fails to demonstrate error in the Board of Appeals' conclusions of law. "'Negligent treatment or maltreatment' [is] an act or omission that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child's health, welfare, and safety."[8] The reviewing judge's findings that Richardson came home under the influence of drugs and smoked crack cocaine in the presence of his six-month-old infant daughter while she was in his care for 30 to 45 minutes supports the DSHS "founded" finding that Richardson's actions rise to the level of negligent treatment or maltreatment. We will not disturb the review judge's determination.

Affirmed.



WE CONCUR:





[8] Former RCW 26.44.020(15) (2004).